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MEENA ARTHUR DATTA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MEENA ARTHUR DATTA, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

ASSET RECOVERY SOLUTIONS, LLC,
an Illinois limited liability company,

Defendant.

Case No. 5:15-CV-00188-LHK-SVK

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: April 27, 2017
Hearing Time: 1:30 p.m.
Hearing Judge: Lucy H. Koh
Hearing Courtroom: 8, 4th Floor
Hearing Location: 280 South First Street
San Jose, California

COMES NOW Plaintiff and Class Representative, MEENA ARTHUR DATTA ("Plaintiff"), by and through counsel, and pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, hereby moves the Court for 1) final approval of the parties' settlement agreement as fair, reasonable and adequate; 2) an order implementing the terms of the settlement; 3) finding the notice as given to the class members satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure; and 4)

1 retaining jurisdiction to enforce the provisions of the Agreement. The settlement terms are set forth in
2 the Amended Settlement Agreement filed herein as Docket No. 128.2.
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1 **I. INTRODUCTION AND OVERVIEW OF THE SETTLEMENT**

2 The proposed settlement resulted from negotiations between the parties after the Court’s ruling
3 on summary judgment failed to dispose of the entire case. The proposed settlement provides that
4 Defendant will: 1) be enjoined from using the name “Asset Recovery Solutions, LLC” appearing
5 through the glassine window in its collection letters, and from placing the letter vendor’s internal
6 tracking codes that appeared above the consumers name in the glassine window in its collection letters;
7 2) make a *cy pres* payment of \$5,000.00 to the Pro Bono Project of Silicon Valley for use in consumer
8 education, in the name of the Class; 3) pay \$1,000.00 to Plaintiff for her individual claims; 4) pay
9 additional amounts for the costs of notice to the Class and administration; and 5) pay any attorney’s
10 fees, costs or expenses that the Court may award to Class Counsel, capped at \$17,000.00. In exchange,
11 Plaintiff, on behalf of the Class, will dismiss the litigation, and the Class will release and discharge
12 Defendant from all claims relating to the litigation. Defendant has already permanently ceased the use
13 of the envelope which was the subject of the Complaint.
14

15 The posture of the case prior to settlement was that the Court was set to conduct a trial to decide
16 the single factual question of whether the name ‘Asset Recovery Solutions, LLC’ on an envelope
17 indicates to the least sophisticated consumer that the letter is from an entity engaged in the business of
18 debt collection. While Plaintiff is hopeful of a favorable determination on the merits, Plaintiff also
19 recognizes that Defendant is equally confident of prevailing. Realistically, the prospect of Plaintiff
20 prevailing at Trial on this single narrow issue could be seen as no better than a “50-50” proposition.
21 Considering the uncertainty of law, risk of loss, and difficulties of proof unique to this action, Plaintiff
22 and Class Counsel believe that the proposed settlement is in the best interests of the Class.
23
24
25

26 **II. STATEMENT OF FACTS AND PROCEEDINGS TO DATE**

27 Plaintiff incurred a financial obligation, namely a consumer credit account issued by HSBC
28

1 Bank Nevada, N.A., which was later sold, assigned, or otherwise transferred to Defendant for
2 collection. Defendant sent Plaintiff a letter, in the form of Exhibit “1” attached to the First Amended
3 Complaint,¹ in an attempt to collect the debt. The collection letter (Exhibit “1”) was sent in a glassine
4 envelope in the form of Exhibit “2” attached to the First Amended Complaint.² The envelope contains
5 the following return address: “Asset Recovery Solutions, LLC, 2200 E. Devon Ave Ste 200, Des
6 Plaines, IL 60018-4501.” Through the glassine window of the envelope, DATTA’s name, address,
7 account number (ARSL/1/6474509), and a barcode were visible.

8
9 On January 13, 2015, DATTA filed her Class Action Complaint, alleging that Defendant and
10 Oliphant Financial, LLC, violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692,
11 and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”). Cal. Civ. Code §1788. Thereafter,
12 on March 4, 2015, DATTA filed her First Amended Class Action Complaint, dismissing Oliphant
13 Financial, LLC, as a Defendant.

14
15 The parties engaged in written discovery on both class and merits issues. During this time,
16 Defendant identified the 11,384 potential class members and produced documents relating to
17 Defendant’s net worth. Thereafter, on October 15, 2015, DATTA filed her Motion for Class
18 Certification. After a full briefing, on March 18, 2016, the Court entered its Order Granting Motion for
19 Class Certification.³ The Class is defined as follows:

20
21 (i) all persons with addresses in California, (ii) to whom Defendant sent, or caused to be
22 sent, a collection letter in the form of Exhibit “1” in an envelope in the form of Exhibit
23 “2,” (iii) in an attempt to collect an alleged debt originally owed to HSBC Bank Nevada,
24 N.A., (iv) which was incurred primarily for personal, family, or household purposes, (v)
25 which were not returned as undeliverable by the U.S. Post Office, (vi) during the period
26 one year prior to the date of filing this action through the date of class certification.⁴

27 Thereafter, on April 28, 2016, the parties each moved for summary judgment. On June 7, 2016,

28 ¹ See Doc. 21-1.

² See Doc. 21-2.

³ Doc. 66.

⁴ *Id.*

1 the Court entered an Order granting Defendant's motion in part, and denying DATTA's motion.⁵ On
2 June 30, 2016, the parties reached an agreement in principle to settle the case on a class basis. On July
3 13, 2016, the parties entered into a signed Settlement Agreement.⁶ The parties later amended the
4 agreement to integrate suggestions made by the Court at the September 22, 2016, preliminary approval
5 hearing.⁷ On January 13, 2017, the Court entered an Order preliminarily approving the settlement.⁸

7 **III. THE PROPOSED SETTLEMENT**

8 The following summarizes the Agreement's terms:

9 **A. The Class**

10 The Court has certified a Class in this litigation, defined as:

11 (i) all persons with addresses in California, (ii) to whom Defendant sent, or caused to be
12 sent, a collection letter in the form of Exhibit "1" in an envelope in the form of Exhibit
13 "2," (iii) in an attempt to collect an alleged debt originally owed to HSBC Bank Nevada,
14 N.A., (iv) which was incurred primarily for personal, family, or household purposes, (v)
15 which were not returned as undeliverable by the U.S. Post Office, (vi) during the period
one year prior to the date of filing this action through the date of class certification.⁹

16 After the mailing of a notice of class certification, 11,350 persons remained in the Class.¹⁰ The
17 deadline to opt out of the proposed settlement is March 28, 2017.¹¹

18 **B. Injunctive Relief**

19 To remedy the actions complained of by Plaintiff, Defendant (1) will be enjoined from using the
20 name "Asset Recovery Solutions, LLC" appearing through the glassine window in its collection letters;
21 and (2) will be enjoined from placing the letter vendor's internal tracking codes that appeared above the
22 consumers name in the glassine window in its collection letters.
23

24
25 ⁵ Doc. 98.

26 ⁶ Doc. 110-1.

27 ⁷ See Doc. 128-2. All references to the "Settlement Agreement" refer to this document.

28 ⁸ Doc. 133.

⁹ Doc. 66.

¹⁰ See Final Report, Doc. 129.

¹¹ See Order Granting Renewed Joint Motion for Preliminary Approval, Doc. 133 at ECF page 4 of 4.

1 **C. Monetary Relief**

2 Defendant will make a *cy pres* payment of \$5,000.00 to Pro Bono Project of Silicon Valley for
3 use in consumer education,¹² in the name of the Class, and pay \$1,000.00 to Plaintiff for her individual
4 claims. Defendant further agrees to pay additional amounts for the costs of notice to the Class and
5 administration, and to pay attorney's fees, costs or expenses to Class Counsel, capped at \$17,000.¹³
6

7 **D. Class Release**

8 In exchange for the benefits allowed under the settlement, class members who do not exclude
9 themselves from the settlement will provide a release of any and all claims, known or unknown, arising
10 from the same factual predicate as the claims asserted in this lawsuit.¹⁴
11

12 **IV. ARGUMENT**

13 **A. The Standards for Judicial Approval of Class Action Settlements**

14 It is well established in the Ninth Circuit that “voluntary conciliation and settlement are the
15 preferred means of dispute resolution.”¹⁵ Class action suits readily lend themselves to compromise
16 because of the difficulties of proof, the uncertainties of the outcome and the typical length of the
17 litigation. “There is an overriding public interest in settling and quieting litigation,” and this is
18 “particularly true in class action suits.”¹⁶
19

20 In approving a proposed settlement of a class action under Federal Rule of Civil Procedure
21 23(e), the Court must find that the proposed settlement is “fair, adequate and reasonable.” The Ninth
22 Circuit has provided a list of factors which may be considered in evaluating the fairness of a class
23 action settlement:
24

25 ¹² See, Declaration of Sandra Madrigal, Doc. 128-8.

26 ¹³ The \$17,000 sum is meant to refund Plaintiff's costs incurred for notice of certification to the Class.
Class Counsel will effectively recover no attorney fees or other costs if this settlement is approved.

27 ¹⁴ See, Settlement Agreement at ¶ 2.4.

28 ¹⁵ *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

¹⁶ *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).

1 Although Rule 23(e) is silent respecting the standard by which a proposed settlement is
2 to be evaluated, the universally applied standard is whether the settlement is
3 fundamentally fair, adequate and reasonable. The district court's ultimate determination
4 will necessarily involve a balancing of several factors which may include, among others,
5 some or all of the following: the strength of plaintiffs' case; the risk, expense,
6 complexity, and likely duration of further litigation; the risk of maintaining class action
7 status throughout the trial; the amount offered in settlement; the extent of discovery
8 completed, and the stage of the proceedings; the experience and views of counsel; the
9 presence of a governmental participant; and the reaction of the class members to the
10 proposed settlement.¹⁷

11 The district court must exercise "sound discretion" in approving a settlement.¹⁸ However,
12 "where, as here, a proposed class settlement has been reached after meaningful discovery, after arm's
13 length negotiation conducted by capable counsel, it is presumptively fair."¹⁹ Therefore, in exercising its
14 discretion, "the court's intrusion upon what is otherwise a private consensual agreement negotiated
15 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
16 that the agreement is not the product of fraud or overreaching by or collusion between, the negotiating
17 parties, and that the settlement, taken as a whole is fair, reasonable, and adequate to all concerned."²⁰
18 The Ninth Circuit defines the limits of the inquiry to be made by the court in the following manner:

19 Therefore, the settlement or fairness hearing is not to be turned into a trial or rehearsal
20 for trial on the merits. Neither the trial court nor this court is to reach any ultimate
21 conclusions on the contested issues of fact and law which underlie the merits of the
22 dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful
23 and expensive litigation that induce consensual settlements. The proposed settlement is
24 not to be judged against a hypothetical or speculative measure of what might have been
25 achieved by the negotiators.²¹

26 Moreover, the recommendations of counsel should be given a presumption of reasonableness.²² The
27 presumption of reasonableness in this action is fully warranted because the settlement is the product of

28 ¹⁷ *Officers for Justice*, 688 F.2d at 625 (citations omitted).

¹⁸ *See, e.g., Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

¹⁹ *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987).

²⁰ *Officers for Justice*, 688 F.2d at 625.

²¹ *Officers for Justice*, 688 F.2d at 625.

²² *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979).

1 arms-length negotiations conducted by capable, experienced counsel.²³ It is the considered judgment of
2 experienced counsel that this settlement is a fair, reasonable and adequate settlement of the litigation.

3 **B. The Settlement Meets the Ninth Circuit Standard for Approval.**

4 **1. The Parties Could Identify the Strengths and Weaknesses of Their Case.**

5 “[T]he stage of the proceedings and the amount of discovery completed” is one of the factors
6 which courts consider in determining the fairness, reasonableness and adequacy of a settlement.²⁴
7 Discovery is complete, and summary judgment has but left a single binary question to be determined at
8 Trial. The maximum recovery for this violation would be statutory damages of no more than 2% of net
9 worth to the Class under both the federal and state statutory scheme and no more than \$2,000 in
10 statutory damages to the Class Representative.
11

12 While Plaintiff believes there is a good chance she could prevail on the remaining claim in the
13 case, she also understands that there are uncertainties associated with complex class action litigation
14 and that no one can definitively predict the outcome of any case. Defendant vigorously contests the
15 merits of Plaintiff’s statutory claim. For instance, Defendant has produced authority that courts (albeit
16 outside this Circuit) have held that using “recovery” in a business name on an envelope did not indicate
17 the business was a debt collector.²⁵ Simply put, Plaintiff believes a jury trial on the single factual
18 question of whether the name ‘Asset Recovery Solutions, LLC’ on an envelope indicates to the least
19 sophisticated consumer that the letter is from an entity engaged in the business of debt collection should
20 be seen as no better than a “50-50” proposition.
21

22 Plaintiff disagrees with Defendant’s analysis, but understands the risks involved with putting a
23

24 ²³ See, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) (“the fact that experienced
25 counsel involved in the case approved the settlement after hard-fought negotiations is entitled to
26 considerable weight.”), *aff’d*, 661 F.2d 939 (9th Cir. 1981).

27 ²⁴ *In re Warner Communications Sec. Litigation*, 798 F.2d 35, 37 (2d Cir. 1986).

28 ²⁵ See, *Mathis v. Omnium Worldwide*, 2006 U.S. Dist. LEXIS 36963, 18-19 (D. Or. June 4, 2006)
(holding that the name, “Estate Recovery, Inc.,” along with the phrase “Over 15 Years of Service to the
Financial Industry” did not violate section f(8)).

1 single, binary choice question to a jury. These factors thus weigh in favor of approval of the settlement.

2 Simply put, the litigation had reached the stage where “the parties certainly have a clear view of
3 the strengths and weaknesses of their cases.”²⁶ In this case, Plaintiff’s counsel had sufficient evidence
4 to permit them to consider the strength and weaknesses of the case, and agreed that the settlement was
5 the appropriate balance of the risks of continued litigation versus the benefits of certain recovery.
6

7 **2. The Settlement Appropriately Balances the Risks of Litigation and the Benefit of a**
8 **Certain Recovery.**

9 “A settlement is not judged against only the amount that might have been recovered had the
10 plaintiff prevailed at trial, nor must the settlement provide 100% of the damages sought to be fair and
11 reasonable.”²⁷ “There is a range of reasonableness in determining whether to approve settlement which
12 recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
13 necessarily inherent in taking any litigation to completion.”²⁸ “The adequacy of the amount recovered
14 must be judged as a yielding of absolutes Naturally, the agreement reached normally embodies a
15 compromise; in exchange for the saving of cost and elimination of risk, the parties each give up
16 something they might have won had they proceeded with litigation.”²⁹ “It is well settled law that a cash
17 settlement amounting to only a fraction of the potential recovery will not per se render the settlement
18 inadequate or unfair.”³⁰
19

20 Plaintiff alleged violations of the FDCPA and violations of the RFDCPA. The FDCPA and the
21 RFDCPA both provide for the recovery of statutory damages by successful plaintiffs in an amount to be
22 determined by the Court. These statutory damages may not exceed \$1,000 in an individual action, and
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25 ²⁶ *In re Warner Communications Sec. Litigation*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985) (“*Warner I*”),
aff’d, 798 F.2d 35 (2d Cir. 1986).

26 ²⁷ *Malta v. Fed. Home Loan Mortg. Corp.*, 2013 U.S. Dist. LEXIS 15731, at *17 (S.D. Cal. Feb. 4,
2013), *citing*, *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

27 ²⁸ *Id.* (citations omitted).

28 ²⁹ *Id.*, *citing*, *Officers for Justice*, 688 F.2d at 624.

³⁰ *Id.*

1 may not exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector in a class
2 action.³¹ Courts have discretion to determine the appropriate amount of statutory damages based on a
3 number of factors (15 USC § 1692k(b)). Thus, courts may award far less than the maximum allowed
4 by the statute.³²

5
6 The Settlement Agreement in this case provides injunctive relief, and that Defendant will make
7 a *cy pres* payment of \$5,000.00 to the Pro Bono Project of Silicon Valley for use in consumer education,
8 in the name of the Class, and pay \$1,000.00 to Plaintiff for her individual claims. Defendant further
9 agrees to pay additional amounts for the costs of notice to the Class and administration, and to pay
10 attorney's fees, costs or expenses to Class Counsel, capped at \$17,000.00.

11
12 **a. Injunctive Relief**

13 The best reason for the Court to approve the parties' settlement is that Plaintiff has achieved the
14 ultimate goal of the lawsuit – stopping the behavior which led to the lawsuit. At the Court's suggestion,
15 the parties amended their initial settlement agreement to explicitly provide for injunctive relief in the
16 settlement agreement. Moreover, Defendant has already permanently ceased the use of the envelope
17 which was the subject of the Complaint.³³

18
19 **b. *Cy Pres* vs. Distribution**

20 “[A] *cy pres* payment, as an adjunct to a payment by other means to some members of the class,
21 is warranted where the amount to be distributed to the remaining class members is small relative to the
22 administrative costs of a direct distribution.”³⁴ Courts within this Circuit and this District routinely
23 approve *cy pres* distribution where distribution to the class members would be infeasible. In *Catala v.*

24
25 ³¹ 15 USC § 1692k(a)(2). The 9th Circuit has not decided whether damages awarded cumulatively
26 under the FDCPA and the RFDCPA in a single action may exceed the FDCPA's \$500,000 limitation on
27 statutory damages. *See, Gonzales v. Arrow Financial Services*, 660 F.3d 1055, 1068 (9th Cir. 2011).

28 ³² *Lombardi v. Columbia Recovery Group, LLC*, 2013 U.S. Dist. LEXIS 146375 (W.D. Wash. Oct. 9,
2013) (awarding only \$1.00 in statutory damages).

³³ *See, Declaration of Justin M. Penn*, Doc. 128-7, and exhibits attached thereto.

³⁴ *In re MetLife Demutualization Litigation*, 689 F. Supp. 2d 297, 343 (E.D. N.Y. 2010).

1 *Resurgent Capital Servs. L.P.*, the Court approved a \$35,000 *cy pres* distribution in a FDCPA action
2 where the *de minimis* recovery of approximately thirteen cents per class member would make
3 distribution to class members impracticable.³⁵ The *Catala* Court also approved a \$2,500 incentive
4 payment to the named Plaintiff, despite there being no distribution to the class. Though not an FDCPA
5 case, in *Lane v. Facebook, Inc.*, the Ninth Circuit Court of Appeals approved a \$9.5 million contribution
6 to a settlement fund which, after attorneys' fees and costs deductions, would be used by defendant to
7 establish charity organization because "it would be burdensome and inefficient to pay the \$6.5 million
8 in *cy pres* funds that remain after costs directly to the class because each class member's recovery under
9 a direct distribution would be *de minimis*."³⁶ In *In re Netflix Privacy Litig.*, this Court approved *cy pres*
10 distributions because of "the sheer size of the Class (over 62 million Netflix members) each Class
11 member would receive a *de minimis* payment in the event of a direct class cash payout. This amount
12 would likely prove to be nullified by distribution costs."³⁷

13
14
15 After 33 exclusions, the Class herein consists of 11,350 persons.³⁸ This would result in a
16 distribution of \$0.44 per person – less than the \$0.47 cost of a first-class postage stamp – if the
17 proposed \$5,000 *cy pres* were simply to be distributed to the Class instead. The cost of mailing notice
18 of class certification to the original 11,383 person Class was approximately \$17,000. Mailing notice of
19 preliminary approval cost just as much. Factoring in the cost of generating 11,350 checks, a
20 distribution may be even more expensive than that figure.

21
22 Class Counsel was previously involved in the case of *Schwarm v. Craighead*,³⁹ where the
23 Eastern District analyzed a similar distribution plan which proposed no disbursement to class members
24 other than the named plaintiffs. Although in *Schwarm*, the litigation costs and attorney fees and
25

26 ³⁵ 2010 U.S. Dist. LEXIS 63501 (S.D. Cal. June 22, 2010).

27 ³⁶ 696 F.3d 811, 824-25 (9th Cir. 2012).

28 ³⁷ 2013 U.S. Dist. LEXIS 37286 (N.D. Cal. Mar. 18, 2013) (Davila, J.).

³⁸ See Final Report, Doc. 129.

³⁹ 814 F. Supp. 2d 1025, 1031 (E.D. Cal. 2011).

1 incentive fees were to be paid from the common fund, with any remainder to be paid to a *cy pres*
2 recipient, the court's analysis is instructive here. The court first distinguished *Cummings v. Connell*,⁴⁰
3 wherein the Ninth Circuit overturned this Court's decision to award nominal damages only to the
4 named plaintiff, and required that each class member receive damages in the amount of \$1.00. Unlike
5 *Cummings*, *Schwarm* did not "involve nominal damages designed to 'vindicate rights, the infringement
6 of which has not caused actual, provable injury'. . ."⁴¹ Thus, the court reasoned, it was "not as
7 symbolically important that each class member be paid a 'token' dollar in damages."⁴² Unlike
8 *Cummings*, and like the case at bar, the limited fund in *Schwarm* was not sufficient to pay each member
9 of the class his or her full damages.
10

11 The *Schwarm* court also discussed *In re Tableware Antitrust Litig.*,⁴³ another Northern District
12 case where all of a class action common fund was awarded to the class attorneys, leaving nothing for
13 distribution to class members. There, the Court engaged in a two step analysis: first, it asked whether
14 the litigation costs sought were reasonable and, second, whether a fully informed class representative
15 engaged in negotiations with class counsel would have agreed at the outset of litigation to reimburse
16 litigation costs up to the full amount of the settlement. The Court answered both questions then in the
17 affirmative. Court should do so here. Although the attorney fees in this case are not being paid as part
18 of a common fund recovery, the underlying principle is the same. The \$17,000 in attorney fees
19 Defendant has agreed to pay represents a refund of costs incurred by Class Counsel to send notice of
20 class certification. Class Counsel here litigated reasonably, did not lose outright on summary judgment,
21 but will still essentially collect no attorney fees or other costs. Though two of the class members in
22 *Schwarm* objected, the Court held that:
23
24
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26 ⁴⁰ 402 F.3d 936, 942 (9th Cir. 2005).

27 ⁴¹ *Schwarm*, 814 F. Supp. 2d at 1032.

28 ⁴² *Id.*

⁴³ 2007 U.S. Dist. LEXIS 89998 (N.D. Cal. Nov. 28, 2007).

1 Plaintiffs' attorneys conducted the litigation responsibly and, even after receiving the
2 bulk of the common fund, will still be suffering a financial loss. . . In such a situation,
3 the court is satisfied that the proposed plan of distribution represents "what it believes
4 would have been obtained in a negotiation between a fully informed and interested class
5 representative and class counsel."⁴⁴

6 The Court can also conclude that the settlement is fair and reasonable by asking what is the best
7 result for the Class in the absence of a settlement. As set forth above, the parties were set to head to
8 jury trial on the single factual question of whether the name 'Asset Recovery Solutions, LLC' on an
9 envelope indicates to the least sophisticated consumer that the letter is from an entity engaged in the
10 business of debt collection. Even if Plaintiff had prevailed on the issue at trial, Plaintiff and the Class
11 would be limited to a *maximum* recovery of 1% of Defendant's net worth, or just under \$16,000. Even
12 in the event of a complete win for Plaintiff, a distribution of \$16,000 would have the same logistical
13 challenges set forth above. The only real benefit to proceeding to Trial would be the chance for Class
14 Counsel to obtain an award of their full attorney fees and costs – if, and only if, Plaintiff were to
15 prevail. However, a win for Plaintiff was far from certain.

16 This award is thus fair, appropriate, and reasonable, especially in light of the anticipated, risk,
17 expense, and uncertainty of continued litigation as discussed above. Thus, a balance of these factors in
18 this case supports approval of the settlement.
19

20 **3. Balancing the Certainty of an Immediate Recovery Against the Expense and**
21 **Likely Duration of Trial Favors Settlement.**

22 The immediacy and certainty of a recovery is a factor for the Court to balance in determining
23 whether the proposed settlement is fair, adequate and reasonable.⁴⁵ Courts consistently have held that
24 "[t]he expense and possible duration of the litigation are major factors to be considered in evaluating
25 the reasonableness of [a] settlement."⁴⁶ Therefore, the present settlement must also be balanced against
26

27 ⁴⁴ *Schwarm*, 814 F. Supp. 2d at 1033, *citing*, *Tableware*, 2007 U.S. Dist. LEXIS 89998, at *23.

28 ⁴⁵ *See, e.g., Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975).

⁴⁶ *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y. 1984).

1 the expense of only potentially achieving a more favorable result at trial.⁴⁷ Approval of the settlement
2 will mean a prompt resolution of this case for all parties. If the case did not settle, the parties would
3 have a trial, the outcome of which as to the quantity of statutory damages would be at issue. The
4 incursion of additional attorney's fees and costs of trial would severely waste resources and result in
5 questionable gain to the Class. A judgment favorable to Plaintiff could be the subject of post-trial
6 motions and appeals, which could prolong the case.⁴⁸ Therefore, litigation, not just at the trial stage, but
7 through post-trial motions and the appellate process as well, could delay a final resolution for the Class.
8

9 Settlement of this litigation before significant additional resources have been expended will
10 benefit everyone. As the Ninth Circuit has made clear, the very essence of a settlement agreement is
11 compromise, "a yielding of absolutes and an abandoning of highest hopes."⁴⁹ "Naturally, the agreement
12 reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk,
13 the parties each give up something they might have won had they proceeded with litigation . . ."⁵⁰
14 Accordingly, even if the Class could have received some *de minimis* monetary compensation after trial
15 (given the damages limit discussed above), such a recovery would be trivial if the Class Members had
16 to wait years. This does not preclude the Court from finding that the settlement is within a "range of
17 reasonableness" that is appropriate for approval.
18
19

20 **4. The Recommendations of Experienced Counsel Weigh Heavily in Favor** 21 **of Approval of the Settlement.**

22 Experienced counsel, negotiating at arm's length, have weighed these factors and endorse the
23 settlement. As courts have stated, the view of the attorneys actively conducting the litigation, while not
24 conclusive, "is entitled to considerable weight."⁵¹ In approving a settlement, courts often focus on the
25

26 ⁴⁷ *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971).

27 ⁴⁸ *See, e.g., Warner I*, 618 F. Supp. at 745 (delay from appeals is a factor to be considered).

28 ⁴⁹ *Officers for Justice*, 688 F.2d at 624.

⁵⁰ *Id*; *Ellis*, 87 F.R.D. at 19 (as a quid pro quo for not having to undergo the uncertainties and expenses of litigation, the plaintiffs must be willing to moderate the measure of their demands).

⁵¹ *Ellis*, 87 F.R.D. at 18.

1 “negotiating process by which the settlement was reached.”⁵² This action has been litigated by
2 experienced and competent counsel on both sides of the case. The law firms representing Plaintiff and
3 the Class are experienced in class action and FDCPA litigation.⁵³ That such qualified and well-informed
4 counsel, operating at an arm’s length, endorse the settlement as being fair, reasonable and adequate to
5 the Class, heavily favors this Court’s approval of the settlement.
6

7 **5. The Reaction of the Class Supports Approval of the Settlement**

8 Notices of the proposed settlement were sent to 11,350 Class Members on February 9, 2017, per
9 the Court’s preliminary approval Order. The deadlines to object and opt out are both on March 28,
10 2017. However, as of March 9, 2017, there have been no objections to the settlement, or opt-outs.⁵⁴
11 The absence of any meaningful objection by class members thus far is an important factor in evaluating
12 the fairness, reasonableness and adequacy of the settlement and supports approval of the settlement.⁵⁵
13 In fact, the lack of objections may well evidence the fairness of the settlement.⁵⁶
14

15 **V. CONCLUSION**

16 This settlement is a good result, given the presence of skilled counsel for all parties, the fact that
17 the Class obtained both injunctive relief and a donation in support of consumer education, the expense
18 if this litigation were to continue to trial, the significant present benefit of the settlement to finally
19 resolve this matter in comparison with the risks involved if the matter proceeded to judgment.
20

21 Moreover, the judicial system and the public benefit from the prompt resolution of potentially
22 complex litigation. Therefore, Plaintiff respectfully request that this Court approve the settlement of
23 this litigation as fair, reasonable and adequate.
24
25

26 ⁵² *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982).

27 ⁵³ *See*, Docs. 128-6, 43-3, 43-6, and 43-7.

28 ⁵⁴ Declaration of Raeon R. Roulston filed herewith at ¶ 4, and Exhibit “A.”

⁵⁵ *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974).

⁵⁶ *In re PaineWebber Pshps. Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997).

CONSUMER LAW CENTER, INC.

Dated: March 11, 2017

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